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**Please find below and/or attached an Office communication concerning this application or proceeding.**

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**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 09/976,411

Filing Date: October 12, 2001

Appellant(s): --

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Alan R. Marshall  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 08/21/2007 appealing from the Office action mailed 03/14/2007.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

5,191,734	WEBER et al	03-1993
5,370,132	WEBER et al	12-1994

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Flick, E.W., "Water-Soluble Resins - An Industrial Guide (2nd Edition)," 1991, pages 163-181.

### **(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

*Claims 42-68 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weber et al (US 5,191,734) (hereafter Weber '734) in view of E.W. Flick, "Water-Soluble Resins - An industrial Guide (2<sup>nd</sup> edition)", 1991, pages 163-181.*

Weber'734 teaches a biodegradable latex web material as a surgical drape comprising a fibrous web being saturated with a latex binder having a glass transition temperature ( $T_g$ ) from  $-50^{\circ}\text{C}$  to  $20^{\circ}\text{C}$  (abstract). Weber '734 discloses that the latex composition is a natural, synthetic or a combination of natural and synthetic polymers as shown in table II. The latex composition comprises a polyacrylate, nitrile rubber, natural rubber or a combination thereof (column 4, lines 31-34, and table II). Weber '734 teaches that the latex binder is about 16 to 80 dry parts per 100 parts fibers by weight (column 5, line 29) within the claimed range. Weber '734 does not specifically disclose the use of a polyacrylate latex having a  $T_g$  of  $-20^{\circ}\text{C}$  or lower. Flick, however, discloses the hystretch elastomeric latexes as paper saturants to add durability and resiliency to the paper web (page 181). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use hystretch elastomeric latex in the paper web motivated by the desire to add durability and resiliency to the product.

Weber '734 discloses the use of the Hycar ® 1570X55 and rubber Hartex ® 104 in the paper web. However, Weber '734 does not specifically disclose their  $T_g$ s. Weber et al (US Patent no. 5,370,132) (hereafter Weber'132) is relied on as evidence to show a state of fact - that is, the Hycar ® 1570X55 and rubber Hartex ® 104 have a  $T_g$  of -48 °C and -70°C respectively (see table IV of Weber '132). The Hycar ®1570X55 and rubber Hartex ® 104 read on Appellants' additional polymer emulsions. Likewise, in accordance with the reference disclosure, it would be acceptable and possible to use the latexes having a  $T_g$  less than -50°C in the web materials. The examiner notes that Flick further discloses the HYCAR acrylic latex 26146 as a paper saturant having a  $T_g$  of -55 °C (page 174). Flick teaches the HYCAR acrylic latexes stable in processing, compounded easily and containing no solvents to cause flammability or toxicity hazards during processing. Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use the Hycar acrylic latex 26146 as a paper saturant for the Weber product motivated by the desire to obtain an ease of the processing.

Weber '734 does not specifically disclose the biodegradable latex web material having a Gurley Hill porosity and exhibiting a % BFE as recited in the claims. However, it appears that the biodegradable latex web material of Weber '734 as modified by Flick is made of the same materials with the similar composition as the medical packaging substrate of the present invention; i.e., paper based web impregnated with a binder present in an amount within the claimed range. The binder has a glass transition temperature within the claimed range. Hence, it is the examiner's position that the

Gurley Hill porosity and the percent bacterial filtration efficiency (BFE) would be inherently present. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties.

**(10) Response to Argument**

***Examiner's comments regarding Appellants' issue A:***

Appellants argue that since "a medical packaging substrate is designed to allow for surgical instruments contained therein to become sterilized, while simultaneously acting as a good barrier to bacteria", the preamble phrase "medical packaging substrate" should be properly treated as limiting. The examiner respectfully disagrees. In the first place, the preamble merely recites the intended use of a latex saturated paper. The structure of the latex saturated paper described in the body of the claim does not depend on the preamble phrase "medical packaging substrate" for completeness. As such, deletion of the preamble phrase does not affect the structure the claimed invention. Therefore, the preamble phrase is not a patentable distinction. Secondly, the "medical packaging substrate" within the contemplation of the present invention could include a blood bag, an intravenous (IV) bag, a medical adhesive bandage and etc, the "medical packaging substrate" could broadly read on anything other than packages for holding medical equipment/tools/instruments.

***Examiner's comments regarding Appellants' issues B and C:***

Appellants argue that Weber '734 does not teach or suggest a polyacrylate having a  $T_g$  of  $-20^{\circ}\text{C}$  or less. Therefore, one skilled in the art would not have been

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motivated to use the polyacrylate latex designated Hystretch<sup>®</sup> V-43 in the web materials of Weber. That is not true. The examiner directs Appellants' attention to abstract of Weber. Weber makes clear that any latexes having the  $T_g$  in the range between  $-50^{\circ}\text{C}$  and  $20^{\circ}\text{C}$  are workable with the web materials. Flick discloses that the use of the hystretch elastomeric latex having a  $T_g$  of  $-43^{\circ}\text{C}$  would add durability and resiliency to the paper web (pages 174 and 181). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to use hystretch elastomeric latex in the paper web motivated by the desire to add durability and resiliency to the product.

Weber '734 does not specifically disclose the biodegradable latex web material having a Gurley Hill porosity and exhibiting a % BFE as recited in the claims. However, it appears that the biodegradable latex web material of Weber '734 as modified by Flick is made of the same materials with a similar composition as the medical packaging substrate of the present invention; i.e., paper based web impregnated with a binder present in an amount within the claimed range. The modified binder has a  $T_g$  within the claimed range. Hence, it is the examiner's position that the Gurley Hill porosity and the percent bacterial filtration efficiency (BFE) would be inherently present. This is in line with *In re Spada*, 15 USPQ 2d 1655 (1990) which holds that products of identical chemical composition can not have mutually exclusive properties. Since Appellants fail to show unobvious differences between the claimed product and the prior art product, the examiner maintained that the Gurley Hill porosity and BFE would be inherently present. Accordingly, the art rejections are sustained.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Hai Vo/

Primary Examiner, Art Unit 1794

**Conferees:**

/Terrel Morris/  
Supervisory Patent Examiner  
Group Art Unit 1794

/Romulo H. Delmendo/  
Romulo H. Delmendo, Appeals Conferee